

***United States Court of Appeals  
for the Second Circuit***



**APPELLANT'S  
REPLY BRIEF**



76-6163

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

-----x  
SANTIAGO, GREGORY R.

Plaintiff,

-against-

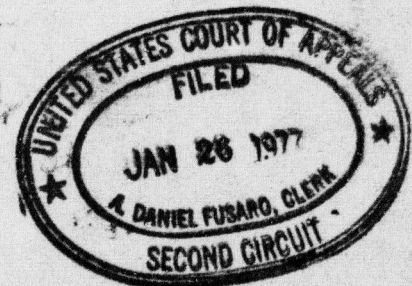
SECRETARY OF THE DEPARTMENT OF  
HEALTH, EDUCATION AND WELFARE OF  
THE UNITED STATES,

Defendant.  
-----x

APPELLANT'S REPLY BRIEF

JOHN C. GRAY, JR.  
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Attorney for Appellant





UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

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SANTIAGO, GREGORY R.

Plaintiff,

Docket No. 76-6163

-against-

SECRETARY OF THE DEPARTMENT OF  
HEALTH, EDUCATION AND WELFARE OF  
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PRELIMINARY STATEMENT

This brief is submitted by the Appellant, Gregory Santiago, in reply to certain portions of the argument in the Brief For The Appellee, Secretary of HEW. As to the remaining portions of the Secretary's argument, Mr. Santiago relies on his main brief.



ARGUMENT

APPELLEE HAS NOT SHOWN THAT  
THIS CASE SHOULD NOT BE  
REMANDED FOR A NEW ADMINISTRATIVE  
HEARING

The Secretary correctly states at page 3 of his brief that "The gravamen of Mr. Santiago's claim for Social Security disability benefits is back pain..., " and, at page 7, "that pain in some circumstances, if supported by objective medical evidence, can be disabling under the Social Security Act." Mr. Santiago further does not dispute the Secretary's contention, at page 7, that "the Secretary sic is not bound to give credence to Mr. Santiago's testimony as to the existence, severity, or debilitating effects of the pain." However, as Appellant's Brief points out, the decision of the Secretary's agent, the Administrative Law Judge, does not indicate whether or not he did give credence to Mr. Santiago's pain testimony. There is some indication in the record that he gave credence to that testimony, but failed to give sufficient weight to it (Appellant's Brief, pp. 11-15); or, alternatively, that he failed in his duty to explore the issue of pain adequately (Appellant's Brief, pp. 21-24.) For that reason, among many others argued in Appellant's Brief, this case should be remanded for a new



administrative hearing.

CONCLUSION

For all the above reasons and for those discussed in Appellant's Brief, dated December 13, 1976, this Court should reverse the decision of the Court below, and order that this case be remanded for a rehearing, at which Mr. Santiago will be represented by counsel and in which all the issues discussed herein and in Appellant's main brief will be fully dealt with.

Dated: January 26, 1977  
Brooklyn, New York

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AFFIDAVIT OF SERVICE BY MAIL

STATE OF NEW YORK     )  
                              :     ss.:  
COUNTY OF KINGS     )

**Gretchen L. Sprague,**                   being duly sworn, deposes  
and says:

That deponent is not a party to the action, is over 18  
years of age and resides at **1150 East 29 Street,**

**Brooklyn, New York**

That on the **26th** day of **January** , 197**7**, deponent  
served the within

**Appellant's Reply Brief**

on

each addressee listed below, being the address designated by  
said **attorney**           for that purpose, by depositing a true copy  
of same enclosed in a postpaid properly addressed wrapper, in  
an official depository under the exclusive care and custody  
of the United States Post Office Department within New York  
State, addressed to:

**Michael Cavanagh, Esq.**  
**Assistant United States Attorney**  
**Eastern District of New York**  
**225 Cadman Plaza East**  
**Brooklyn, New York 11201**

*Gretchen L. Sprague*  
**GRETCHEN L. SPRAGUE**

Sworn to before me this

**26th day of January** , 197**7**

*Doug Seidman*  
**NOTARY PUBLIC**

**DOUG SEIDMAN**  
Notary Public, State of New York  
No. 43-4628022  
Qualified in Richmond County  
Commission Expires March 30, 19**78**